

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D24366
G/kmg

_____AD3d_____

Argued - June 3, 2009

PETER B. SKELOS, J.P.
DANIEL D. ANGIOLILLO
CHERYL E. CHAMBERS
PLUMMER E. LOTT, JJ.

2008-04031

DECISION & ORDER

In the Matter of 171 Sterling, LLC, f/k/a
Sterling Condominium, LLC, respondent,
v Stone Arts, Inc., appellant

(Index No. 9597/07)

Shanker Law Group, Mineola, N.Y. (Michael L. Shanker and Kristina Giyaur of
counsel), for appellant.

Behnam Kahen, Flushing, N.Y., for respondent.

In a proceeding pursuant to Lien Law § 19(6) to summarily discharge a mechanic's lien, Stone Arts, Inc., appeals from an order of the Supreme Court, Nassau County (Woodard, J.), dated March 19, 2008, which denied that branch of its motion which was for leave to renew its opposition to the petition to discharge the lien, which had been granted in an order dated November 28, 2007.

ORDERED that the order dated March 19, 2008, is affirmed, with costs.

In an order dated November 28, 2007, the Supreme Court granted the petition to summarily discharge the appellant's mechanic's lien. No appeal was taken from that order. Thereafter, by order to show cause dated December 19, 2007, the appellant moved, inter alia, for leave to renew its opposition to the petition based upon new factual material which was available at the time the original motion was made. In the order appealed from, the Supreme Court denied that branch of the appellant's motion which was for leave to renew on the ground that the new factual material would not change the result. Renewal was properly denied (*see Swedish v Beizer*, 51 AD3d 1008; *State Farm Mut. Auto. Ins. Co. v Hertz Corp.*, 43 AD3d 907).

October 6, 2009

Page 1.

MATTER OF 171 STERLING, LLC, f/k/a STERLING CONDOMINIUM, LLC
v STONE ARTS, INC.

To the extent that the appellant challenges the original order dated November 28, 2007, from which it did not take an appeal, its arguments are not properly before this Court, since the order appealed from, denying that branch of the appellant's motion which was for leave to renew, does not bring up for review the original order (*see* CPLR 5517).

SKELOS, J.P., ANGIOLILLO, CHAMBERS and LOTT, JJ., concur.

2008-04031

DECISION & ORDER ON MOTION

In the Matter of 171 Sterling, LLC, f/k/a
Sterling Condominium, LLC, respondent,
v Stone Arts, Inc., appellant

(Index No. 9597/07)

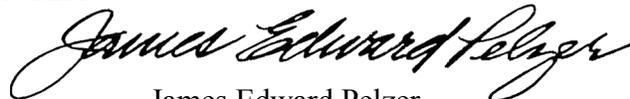
Motion by the petitioner, on an appeal from an order of the Supreme Court, Nassau County, dated March 19, 2008, *inter alia*, in effect, to strike portions of the appellant's brief on the ground that the appellant seeks to challenge a prior order of the same court dated November 28, 2007, from which no appeal was taken. By decision and order of this Court dated December 11, 2008, that branch of the motion which was, in effect, to strike portions of the appellant's brief was held in abeyance and was referred to the panel of Justices hearing the appeal for determination upon the argument or submission thereof.

Upon the papers filed in support of the motion, the papers filed in opposition thereto, and upon the argument of the appeal, it is

ORDERED that the branch of the motion which was, in effect, to strike certain portions of the appellant's brief is granted, and those portions of the brief which raise arguments concerning the order of the Supreme Court, Nassau County, dated November 28, 2007, are stricken and have not been considered on the appeal.

SKELOS, J.P., ANGIOLILLO, CHAMBERS and LOTT, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

October 6, 2009

Page 2.

MATTER OF 171 STERLING, LLC, f/k/a STERLING CONDOMINIUM, LLC
v STONE ARTS, INC.